



THE VOICE OF COLORADO'S CITIES AND TOWNS

1144 Sherman Street, Denver, CO 80203 • (p) 303-831-6411 / 866-578-0936 • (f) 303-860-8175 • www.cml.org

To: Interested Municipal Officials
From: Sam Mamet
Date: October 15, 2009
Subject: Initiatives #10, #12, and #21

Introduction

We wanted to bring to your attention three proposed initiatives currently circulating. Required signatures equal to 76,047 must be submitted for these to qualify on the 2010 general election ballot. Because of their municipal finance implications we are keeping a very close eye on them, and will continue to keep you posted. These proposals are subject to great interpretation. Individual legal and bond counsel should be consulted.

Proposed Initiative #10 Text Summary (statutory change) (petitions due November 13)

- Specific ownership taxes must decrease in four equal steps annually to \$2 on new vehicles and \$1 to all other vehicles.
- All state and local taxes on vehicle rentals and leases shall end, and on \$10,000, reached in four equal yearly steps, of sales prices per vehicle. Sales rebates are not taxable.
- All vehicle registration, license, and title charges combined shall total \$10 annually per vehicle. All state and local government charges on vehicles and vehicle uses shall cease, with certain exceptions. All added charges shall be considered tax increases.
- The state income tax rate shall be 4.5% in 2011. Later rates shall decrease 0.1% annually, until reaching 3.5%, in each of the first ten years that yearly income tax revenue net growth exceeds 6%.
- Starting on January 1, 2011, there will be no state or local charges on various forms of telecommunications. Additional charges will be considered tax increases. There is an exception for 911 fees at 2009 rates.
- Enforcement is intended to reduce government revenue. Prevailing plaintiffs shall have their legal fees and court costs repaid. The state must audit the provisions of the amendment yearly to assure compliance in an effort to reduce "unfair, complex charges on common basic needs."

The proponents are Jeff Gross of Kersey and Freda Poundstone of Centennial (who is a former municipal official, when she served as Greenwood Village Mayor).

Purposes

Initiative #10 covers vehicle taxes and fees, the state income tax, and telecommunication taxes in these ways.

Vehicles:

- Decreases all annual specific ownership (SO) taxes for new and other vehicles in four equal and annual steps. These taxes are collected as a tax on the value of certain vehicles, in lieu of collecting a property tax. According to the 2008 annual report of the state Department of Revenue, this totaled \$492.4 million last year for counties, municipalities, school districts, and special districts. It is collected by the counties and distributed in proportion that each property taxing entity bears to all property taxes collected in the county. There is another portion of the tax on trucks and other heavy vehicles collected by the state Revenue Department and distributed back to the counties only according to state highway miles in each county. This amounted to \$16.2 million in 2008.
- Ends state and local car rental taxes and taxes on leases and on \$10,000, reached in four equal yearly steps, of sales prices per vehicle.
- Ends the taxation of sales rebates.
- Requires that all registration, license, and title changes combined total \$10 annually per vehicle.
- Ends all state and local government charges on vehicles and vehicle uses, with certain exceptions.
- Specifies that all added charges are tax increases, with certain exceptions.

Income Tax:

- Sets the 2011 state income tax rate at 4.5% and reduces the tax rate eventually to 3.5% under certain conditions. The current personal and corporate income tax rate is 4.63% and generated \$5.6 billion in 2008 for the state general fund. At least one group, the Bell Policy Center, has estimated this will be a \$1 billion loss to the state general fund.

Telecommunication Tax:

- Eliminates most charges and taxes on telecommunication services.
- Exempts 911 fees, but sets them at 2009 rates.
- Specifies added charges shall be tax increases.

Substantive Issues

The measure appears to deal with differing subjects and as a result may conflict with the single subject rule. For example, the measure is called "reducing government charges," although the measure also deals with taxes. Taxes and charges have been differentiated by the courts numerous times in Colorado. They are not one and the same as a legal matter.

There are dramatic and major fiscal impacts to both the state and to local governments under the provisions of the revenue reductions proposed.

The SO tax reduction could be substantial, since the current tax is on a percentage of value formula and the initiative is on a flat dollar amount. On its face, it appears to virtually eliminate the tax and the associated local government revenue.

One reading of the initiative could imply that state and local taxes only would be paid on the first \$10,000 of the value of a new vehicle. This will result in substantial revenue losses.

The measure purports to limit registration, license, and title charges to no greater than \$10 annually. The measure not only eliminates for all intents and purposes the so-called League-supported "FASTER" bill from the last session of the General Assembly; it appears to cut even more deeply into the HUTF and CDOT, and the related share back to counties and municipalities.

911 fees are locked into their 2009 rates as there is no escalator clause to allow for increases, thus causing a reduction in revenues as service demands increase in the area of emergency response. There appears no way for those fees ever to increase to match increased service demands.

The restriction on telecommunication taxes is quite broad and extends to "telephone, pager, cable, television, radio, internet computer, satellite, or other telecommunication service accounts." We believe it may call into question the administration, collection, and enforcement of utility occupation taxes, sales and use taxes on telecommunication services, and franchise fees.

The proposal allows only the prevailing plaintiff to have their legal fees and court costs repaid. There is no similar provision available to a prevailing defendant local government entity. It is also unclear how the state will enforce compliance through an annual audit, let alone the fiscal impact upon the state to undertake this mandated responsibility.

Proposed Initiative #12 Text Summary (constitutional change) (petitions due November 13)

- Electors may vote on property taxes where they own real property.
- Local governments must allow petitions to lower property taxes as voter-approved revenue changes.
- Property tax measures may only be voted on in November elections and must be separate from debt measures.
- Property tax bills shall list only property taxes and late charges.
- Enterprises and authorities shall pay property taxes. Local governments must lower their tax rates to offset this revenue.
- Enterprises and unelected board may not levy a mandatory fee or property tax.
- Future property tax rate increases must expire in 10 years.
- An expiring property tax increase which is extended is a tax increase.
- Prior actions to keep excess property tax revenues are expired, and future actions are tax increases which must expire in 4 years.
- Non-college school districts must phase out equally by 2020 half their 2011 property tax rate not dedicated to debt. State aid shall replace that revenue annually.

- Property tax increase, extension, and abatement rates after 1992 shall expire.
- Taxes exceeding state laws, tax policies, or limits "violated, changed, or weakened" without voter approval shall expire.
- Laws, policies, and limits, including debt limits, are restored.

The proponents are Bonnie Solan of Black Hawk and Louis Schroeder of Greenwood Village.

Purposes

Initiative #12 deals entirely with property taxes in four ways.

Property tax elections:

- Allows electors to vote on property taxes where they own real property.
- Requires local governments to allow petitions to lower property taxes and requires property tax issues to have November election notices. These are to be independent of debt issues.

Property Taxes Generally:

- Requires property tax bills to list only taxes and late charges.
- Requires enterprises and authorities to pay property taxes. Local governments have to reduce their mill levies to offset this revenue. These entities may not levy a mandatory fee or tax on property.
- Expires within 10 years future property tax increases and prior actions to keep excess property tax revenue. Extending an expiring tax is a tax increase.
- Prior actions to keep excess property tax revenues expire and future actions are tax increases.
- Non-college school districts must phase out certain property tax revenues and this lost revenue is to be replaced by the state.

Taxes which must expire:

- Taxes exceeding state law, tax policies, or limits "violated, changed, or weakened" without voter approval.
- Taxes exceeding the dollar amount first listed on a tax increase ballot title.
- Rates without voter approval after 1992.

Enforcement:

- The state must audit and enforce the provisions of the amendment.
- Awards costs and attorney fees only to successful plaintiffs.

Substantive Issues

The amendment does not define "elector." Does this mean registered electors who own real property? Does it allow a corporation or other legal entity to participate in an election involving property taxes? Can a person who owns property in Colorado and resides out of state vote in a local election? This appears to substantially broaden voter participation in property tax

elections to individuals and entities having little stake in a local government putting forth such a question.

The whole process of processing petitions and the conduct of elections locally is unclear and may substantially impact the financial operations of local government as well as election administrators, like municipal clerks.

How will school districts equally phase out half of their 2011 property tax rate not paying debt by 2020? And, what will the impact on state finances become since the amendment requires the state to absorb this revenue reduction? According to the Legislative Council staff memorandum reviewing this proposal for the proponents earlier this year, this could be over \$600 million.

What happens to all voter approved questions at the local level to keep and spend excess revenues. There could be some dramatic impacts on local government in this regard. There have been over 400 such questions approved by municipal voters since 1992.

What impact will this amendment have on local governments which have established enterprises (clearly authorized under the current provisions of TABOR) which now will have to pay property taxes, the revenues of which require a receiving local government to reduce its own property taxes by a proportionate amount.

Proposed Initiative #21 Text Summary (constitutional change) (petitions due November 27)

- The state may not contract any debt by loan in any form.
- No political subdivision shall contract any debt by loan in any form, without voter approval. The loan shall not be repealed until such debt is fully paid or discharged. The ballot title shall specify the use of the funds, which may not change.
- The state and local governments may not borrow directly or indirectly money or other items of value for any reason or period of time, after 2010.
- Local governments may borrow money only after November voter approval. A non-enterprise may not borrow if the borrowing exceeds 10% of the assessed value within its jurisdiction.
- No borrowing may continue past its original term, and all current borrowing shall be paid. Except enterprise debt, after each debt is repaid, current tax rates shall decline as voter-approved revenue changes equal to its planned average annual repayment, even if not repaid by taxes.

The proponents are Russell Haas of Golden and Michelle Northrup of Black Hawk.

Purposes

Initiative #21 covers debt in the following ways:

- Prohibits the state to contract debt by loan in any form.
- Prohibits local governments and other political subdivisions to contract debt by loan in any form without voter approval.

- Specifies that a ballot title for any question must detail how the moneys to be borrowed are to be used.
- Prohibits any subsequent change in the use of the money borrowed.
- Prohibits any voter-approved debt incurred from being repealed until it is fully repaid.
- Imposes specified limits on borrowing pegged to a percentage of assessed valuation after 2010.

Substantive Issues

What happens to current state outstanding bonded indebtedness, given the enabling language in the amendment which expressly prohibits any debt by loan in any form? And, while this language is silent in its application to local governments and other political subdivisions, does it apply nevertheless?

Does the amendment eliminate existing legal limits on local governments to incur general obligation debt? What is the impact of the amendment on local government debt like revenue bonds, debt for water/sewer?

Certificates of participation, lease purchase agreements, building authorities all appear to be limited to voter approval. What are the implications to municipal finance and borrowing rates and the ability to finance important public projects?

What does this amendment do to various forms of existing debt already in place?

Does "November voter approval" refer to a general election only, or November in odd-numbered years as currently allowed under TABOR?

Is debt allowed which only can be paid back within ten years, as the amendment seems to suggest?

Conclusion

If you have any questions about the issues raised in this memorandum, please do not hesitate to contact Sam Mamet at smamet@cml.org for further information. These proposals have important implications for municipal finance and need to be carefully examined should they qualify for the November, 2010 election. The League will offer more information on them over the months ahead.

This memorandum is not intended as a comprehensive analysis of the measures and should not substitute for your own careful reading of them.

If you would like to examine the exact text of the measures, please go to the web site of the Colorado General Assembly, www.colorado.gov/lcs, and click on the button which says "ballot and blue book." This will lead you to more information on these and other proposed initiatives circulating for the 2010 general election ballot.